IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEBRASKA

CHURCH MUTUAL INSURANCE COMPANY,)
Plaintiff,)) 8:11CV304
vs.) ORDER
CLAY CENTER CHRISTIAN CHURCH, CHERYL S. GREEN, individually and as Personal Representative of the Estate of John R. Green,))))
Defendants.)

This matter is before the court on the defendant Cheryl S. Green's (Green) Motion to Strike (Filing No. 91). Green filed a brief (Filing No. 92) and an index of evidence (Filing No. 93) in support of the motion. Green seeks an order striking the plaintiff's reply brief (Filing No. 89) and index of evidence (Filing No. 90) filed on September 4, 2012, in support of its Motion for Summary Judgment (Filing No. 79). Green argues the plaintiff filed the reply in contravention of the deadlines imposed by the Civil Rules of the United States District Court for the District of Nebraska (Nebraska Civil Rules).

The plaintiff filed the Motion for Summary Judgment (Filing No. 79) on August 1, 2012. Green filed a response, including a brief (Filing No. 86) and an index of evidence (Filing No. 87), on August 22, 2012. Pursuant to the Nebraska Civil Rules, the plaintiff, "may file a reply brief and index of evidence within 7 days after the opposing party files and serves the opposing brief." NECivR 7.0.1(c). Resolution of the defendant's motion to strike does not, however rest here.

"Federal Rule of Civil Procedure 6 applies when computing any period of time stated in these rules." NECivR 6.1.; see Fed. R. Civ. P. 6(a). Under the Federal Rules of Civil Procedure Rule 6, the time for filing the plaintiff's reply is calculated using the following method.

When the period is stated in days or a longer unit of time:
(A) exclude the day of the event that triggers the period;

- (B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and
- (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Fed. R. Civ. P. 6(a)(1).

Applying only Rule 6(a)(1)(A) and (B), the seventh day after Green filed her August 22, 2012, response is August 29, 2012.

Rule 6 and Nebraska Civil Rule 6.1 provide additional days for filing. "The 3-day federal mailing rule applies whether service is accomplished by mail, by leaving with the clerk, by electronic filing, or by other means to which the parties have consented." NECivR 6.1.; see Fed. R. Civ. P. 6(d). In this case, Green served her response by filing the documents with the clerk of court using the electronic filing system. See Filing No. 86 - Brief p. 31 (Certificate of Service). Green fails to show she personally served the documents. Adding three days, as dictated by Rule 6(d), and applying Rule 6(a)(1)(C) with September 3, 2012, being a legal holiday, the court calculates the deadline for the plaintiff's reply to be September 4, 2012. September 4, 2012, is the date on which the plaintiff filed its reply materials. The plaintiff's reply was timely filed and Green's motion to strike must be denied. Upon consideration,

IT IS ORDERED:

Cheryl S. Green's Motion to Strike (Filing No. 91) is denied.

DATED this 7th day of September, 2012.

BY THE COURT:

s/ Thomas D. Thalken
United States Magistrate Judge

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